IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2127 of 2004

with

CIVIL APPLICATION NO 7302 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

GUJARAT STATE ROAD TRANSPORT COPORATION

Versus

MEGHJIBHAI DAYABHAI BABARIYA

Appearance:

1. First Appeal No. 2127 of 2004

MR RAJESH R DEWAL for Appellant

MS MAMTA R VYAS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 06/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"), the Gujarat State Road Transport Corporation has challenged the judgment and award dated 2.1.2003 passed by the Labour Court acting as Commissioner under the Act in Workmen's Compensation Application No.32 of 1999 awarding compensation to the tune of Rs.2,03,328/- with interest @ 12% per annum from the date of the accident.

2. The respondent was a permanent driver employed by the appellant-Corporation. On account of the accident which admittedly took place on 17.11.1998 during the course of employment of the respondent herein with the appellant-Corporation, the respondent sustained serious injuries resulting into fractures on the right leg and tibia and fibula. The respondent was required to be hospitalised and had to undergo surgeries, including insertion of rod into his right leg. On account of the serious permanent disability suffered by the respondent, the Corporation itself offered alternative job to the respondent, but the respondent declined that offer and opted for retirement. The respondent filed the above-numbered claim application before the learned Commissioner claiming compensation of Rs.1,50,000/- with interest @ 12% and penalty @ 50% of the amount of compensation. The respondent examined himself as a witness and also produced disability certificate dated 23.6.2000 and the medical certificate issued by the Resident Medical Officer, Civil Hospital, Ahmedabad certifying as follows:-

> "At present, the workman is unfit for driver's job."

In view of the fact that the Corporation itself had offered light-duty job to the respondent, there was no dispute about the fact that on account of the injuries sustained by the respondent in the accident which took place during the course of his employment, the respondent was not in a position to work as a driver. However, the Corporation's case was that since the Corporation was ready to offer a light-duty job to the respondent, it could not be said that the respondent had suffered total permanent disability and that, as per the disability

certificate (Exh.22) given by Dr.Kishore Solanki and produced by the respondent, the disability should be assessed at 17% and, therefore, the respondent had suffered only partial permanent disability.

The respondent specifically stated in his evidence that he was not in a position to do any work on account of the injuries sustained by him and that he was even unable to bend his right knee.

3. In view of the above evidence and in view of the decision of the Apex Court in PRATAP NARAIN SINGH DEO v. SHRINIVAS SABATA AND ANOTHER reported in AIR 1976 SC 222 and also on the basis of a decision of this Court in AHMAN HARUN GORI v. ABBAS IBRAHIM KARA reported in 1994 (68) F.L.R. 1096, the learned Commissioner held that the respondent had suffered total permanent disability. The learned Commissioner assessed compensation by applying the relevant factor as stipulated in Schedule IV to the Act on the basis that the respondent was 45 years of age at the time of accident and that his salary was Rs.4,858/- per month and, on that basis, the learned Commissioner awarded compensation of Rs.2,03,328/- and also interest @ 12% from the date of accident till payment as per the provisions of Section 4-A of the Act.

4. Mr. Rajesh Dewal with Mr.Kinariwala for the appellant-Corporation has submitted that the respondent had claimed compensation of Rs.1,50,000/-, but the learned Commissioner erred in awarding compensation of Rs.2,03,328/-.

Secondly the learned counsel has submitted that the Corporation had offered alternative job to the respondent and that was sufficient to indicate that the respondent had not suffered total permanent disability, i.e. 100% disability, but had suffered only partial disability and, therefore, the amount of compensation could not have been awarded on the basis of 100% disability.

5. As far as the first contention is concerned, the compensation is awarded under the provisions of Sections 3 and 4 of the Act, which insofar as are relevant, read as under:-

"3. Employer's liability for compensation:-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in

accordance with the provisions of this Chapter."

xxx xxx xxx

"4. Amount of compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) xxx xxx xxx

(b) Where permanent total disablement results from the injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor,

or

an amount of sixty thousand rupees whichever is more.

Explanation.I :- For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II:- Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only.

(c) xxx xxx xxx"

(emphasis supplied)

6. The aforesaid statutory provisions, therefore, prescribe a formula for determining compensation payable to an injured workman. Under Section 4 of the Act, the Commissioner is not given any discretion and, therefore, the amount claimed by the workman in the claim

application under the Act cannot be relevant or decisive for determining compensation. The amount of compensation has to be determined only in accordance with the provisions of the Act. In view of the above statutory scheme, there is no substance in the first contention urged on behalf of the appellant Corporation.

Even otherwise, in NAGAPPA v. GURUDAYAL SINGH & OTHERS reported in (2003) 2 SCC 274, while dealing with the provisions of Sections 166, 168 and 158 of the Motor Vehicles Act, 1988, which provides the remedy for claiming compensation without providing for any such pre-determined formula for compensation, the Apex Court has held that the discretion conferred on the Tribunal to award "just compensation" is not fettered by the amount claimed in the claim application and, therefore, if the facts and circumstances of the case and the material on record so justify, the Tribunal has the jurisdiction to award a larger sum than the amount claimed in the claim petition under the Motor Vehicles Act. In this context, the Apex Court in NAGAPPA (supra) held as under:-

" In the Motor Vehicles Act, 1988 there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This is clear from Sections 166 (1) and (4), 158 (6) and 168."

This principle will apply with greater vigour in claim applications under the Workmen's Compensation Act which prescribes a statutory formula for determining compensation in case of an accident where the claim is made under the Workmen's Compensation Act, 1923. Hence, the first contention has to be rejected.

7. Coming to the second contention, it is true that the Corporation offered alternative job to the respondent. The question is, merely because the Corporation made such an offer, could it be said that the workman had not suffered total permanent disability? Admittedly, the respondent was employed as a driver and in view of the nature of the injuries and the disability suffered by the respondent, the respondent is not in a

position to work as a driver as certified by the Resident Medical Officer of Civil Hospital, Ahmedabad. In PRATAP NARAIN SINGH (supra), the Constitution Bench of the Apex Court had an occasion to deal with the case of a carpenter whose left arm from the elbow was amputated in an accident in the course of his employment. The defence urged by the employer in that case was that even if the workman was not in a position to work as a carpenter, at least he would be able to do some other work suggesting that the workman had not suffered total permanent disability, but only partial permanent disability. The Apex Court rejected that contention and held that since the workman was a carpenter and a carpenter cannot work with one hand, the disablement was total and not partial. As per Section 2 (1) (l) of the Act, "total disablement" means disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

8. In the facts of the present case, the respondent was employed as a driver and on account of the serious injuries, he suffered fractures on his right leg, tibia and fibula and he had to undergo insertion of rod on his right leg which has made it impossible for the respondent to bend his right leg. The learned Commissioner was, therefore, justified in recording his finding that the accident had incapacitated the respondent herein for the work of a driver and that the respondent had suffered total permanent disability.

9. The learned counsel for the appellant Corporation, however, submitted that in the facts of the present case, the Corporation had offered an alternative job to the respondent which would have resulted into protection of his pay and, therefore, it cannot be said that the respondent had suffered any total permanent disability. However, in the evidence in his cross-examination, the respondent stated that he was not in a position to do any work and, therefore, he had to leave the job. This stand of the respondent workman has to be appreciated in the context of the fact that the respondent was aged only 45 years on the date of the accident and had another 13 years service with a Government corporation. The respondent was getting monthly salary of Rs.4858/- and with periodical revisions in payscale, his salary was bound to go up. The maximum amount that the respondent was entitled to get under the provisions of the Act was only Rs.2,03,328/-. No person would give up a job with a monthly salary of almost Rs.5,000/- with 13 more years service to go merely in

order to get compensation of Rs.2,03,328/-. In this view of the matter, we are of the view that the learned Commissioner has not made any error in not accepting the contention urged on behalf of the appellant Corporation.

10. In view of the above discussion, we find no merit in this appeal. The appeal is, therefore, summarily dismissed.

11. In view of dismissal of the appeal, the Civil Application does not survive and is accordingly dismissed.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)